

# PATENT COOPERATION TREATY

U 016457-9

From the  
INTERNATIONAL SEARCHING AUTHORITY

PCT

To:

see form PCT/ISA/220

## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing  
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference  
see form PCT/ISA/220

**FOR FURTHER ACTION**  
See paragraph 2 below

International application No.  
PCT/IN2005/000086

International filing date (day/month/year)  
17.03.2005

Priority date (day/month/year)  
18.03.2004

International Patent Classification (IPC) or both national classification and IPC  
INV. A61K9/00 A61K47/10 A61K47/14

Applicant  
PANACEA BIOTEC LTD.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office - P.B. 5818 Patentlaan 2  
NL-2280 HV Rijswijk - Pays Bas  
Tel. +31 70 340 - 2040 Tx: 31 651 epo nl  
Fax: +31 70 340 - 3016

Date of completion of  
this opinion

See form  
PCT/ISA/210

Authorized Officer

Scarponi, U

Telephone No. +31 70 340-3292



WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of:

- ☒ the international application in the language in which it was filed
- ☐ a translation of the international application into , which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1 (b)).

2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material:

- ☐ a sequence listing
- ☐ table(s) related to the sequence listing

b. format of material:

- ☐ on paper
- ☐ in electronic form

c. time of filing/furnishing:

- ☐ contained in the international application as filed.
- ☐ filed together with the international application in electronic form.
- ☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

Box No. II Priority

1. ☒ The validity of the priority claim has not been considered because the International Searching Authority does not have in its possession a copy of the earlier application whose priority has been claimed or, where required, a translation of that earlier application. This opinion has nevertheless been established on the assumption that the relevant date (Rules 43*bis*.1 and 64.1) is the claimed priority date.
2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

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**Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of

☐ the entire international application

☒ claims Nos. 23

because:

☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international search (*specify*):

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed (*specify*):

☒ no international search report has been established for the whole application or for said claims Nos. 23

☐ a meaningful opinion could not be formed without the sequence listing; the applicant did not, within the prescribed time limit:

☐ furnish a sequence listing on paper complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.

☐ furnish a sequence listing in electronic form complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.

☐ pay the required late furnishing fee for the furnishing of a sequence listing in response to an invitation under Rules 13~~ter~~.1(a) or (b).

☐ a meaningful opinion could not be formed without the tables related to the sequence listings; the applicant did not, within the prescribed time limit, furnish such tables in electronic form complying with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions, and such tables were not available to the International Searching Authority in a form and manner acceptable to it.

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in electronic form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.

☐ See Supplemental Box for further details

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**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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1. Statement

Novelty (N)	Yes: Claims	1-25
	No: Claims	
Inventive step (IS)	Yes: Claims	1-25
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-22,24-25
	No: Claims	

2. Citations and explanations

**see separate sheet**

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING  
AUTHORITY (SEPARATE SHEET)

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**Re Item III****Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

Present **claim 23** relates to subject-matter considered by this Authority to be covered by the provisions of **Rule 67.1(iv) PCT**. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of this claim (**Article 34(4)(a)(I) PCT**).

**Re Item V****Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

Reference is made to the following document:

**D1 : WO 97/26917 A (CHEMISCH ADVIESBUREAU) 31 July 1997 (1997-07-31)**

Unless otherwise indicated, reference is made to the relevant passages emphasized in the International Search Report.

**V.1.** For the assessment of the present **claim 23** on the question whether it is industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.

**V.2.** Present **claims 24-25** contain a reference to the description (and to the examples). According to **Rule 6.2(a) PCT**, claims should not contain such references except where absolutely necessary, which is not the case here.

**V.3.** The subject-matter of present **claims 1-25** is novel (**Article 33(2) PCT**).

In fact, the **document D1**, which is considered to represent the most relevant state of the art, discloses topical compositions for the treatment of skin affections and the process to prepare them. Those compositions are prepared by mixing a two-phase system, i.e. an oily phase containing an emulsifying system (comprised of higher and lower HLB surfactants) and a lipophilic active agent like vitamin E, and an aqueous phase containing soluble components together with a gel-former polymer. From this, the subject-matter of present independent

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claims 1, 22 differs in that the gelling agent is not finally added to the aqueous phase before mixing, but instead the oily phase is preliminarily gelled by a gelator surfactant system. The subject-matter of present **claims 1-25** is therefore novel **as already stated (Article 33(2) PCT)**.

On the other hand, the **problem** to be solved by the present invention may be regarded as the preparation of improved gelled topical compositions for the administration of active ingredients (notably the ingredients of present dependent claims 4-6). The **solution** to this problem proposed in present independent claims 1, 22 of the present Application (i.e. the preliminary gelling of an oily system by a gelator mixed-surfactant system, before mixing with an aqueous system) is considered as involving an inventive step **(Article 33(3) PCT)** because it is not rendered obvious by the compositions and the processes of the prior art, wherein an oily phase (containing a mixture of surfactants and an active agent) is mixed with an aqueous phase containing a gelling agent. The subject-matter of present **claims 1-25** is therefore considered as involving an inventive step **(Article 33(3) PCT)** as already stated.